C.R.No.78/06

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. CIVIL REVISION PETITION NO.78/2006

Kanhaiya Lal Gupta

Vs.

Shahabuddin & Ors.

DATE OF ORDER :: 17/11/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. M.M. Ranjan, for petitioner

***

Instant revision petition has been filed by the defendant-petitioner against the order dated 1st June, 2006 whereby his application filed under O.7 R.11 CPC was dismissed by the learned trial Judge.

Facts, in brief, are that the respondent-plaintiff filed a suit seeking permanent injunction under O.7 R.1 CPC with the following prayer:

> "That a suit was filed by Shri Shahabuddin on the basis of unregistered agreement to sale. He alleged in the plaint that he had purchased through agreement to sale Khasra No.354/1 and the defendants are causing hindrance in his possession an prayed as under:
>
> यह है कि दावा हाजा के चरण संख्या-2 मे वर्णित भूखण्ड पर प्रतिवादी संख्या एक जबरन कब्जा ना करे ना अपने किसी अधिनस्थ से कब्जा करावे एवं बाज रहे।
>
> यह कि खर्चा मुकदमा वादी को प्रतिवादी संख्या-1 से दिलाया जावे।
>
> यह कि अन्य दीगर दादरसी बहक वादी विरूद्ध प्रतिवादी संख्या-1 पारित की जावे।"

After service of notice, the petitioner filed written statement and also filed application under O.7 R.11 CPC with an objection that the plaint does not disclose any cause of action and entire thrust is based on unregistered agreement to sale and in such circumstances, if the respondent is permitted to try the suit, the entire exercise will be in futility and accordingly, hasprayed for rejection of the plaint.

Learned trial Judge after taking into consideration the material which has come on record, particularly, the plaint and documents annexed thereto, recorded a finding that the respondent-plaintiff has sought permanent injunction against the disputed property referred to therein and there is no statutory bar in questioning the present dispute and has further observed that the objection, which has been raised by the petitioner, can be considered only after issues are framed and parties are permitted to lead evidence.

I have gone through the order passed by the learned trial Judge dated 1st June, 2006.

In my opinion, the finding recorded is duly supported by material on record and the suit certainly discloses the cause of action for which it has been filed. Counsel has not been able to show that there is any statutory bar in filing of the suit by the respondent-plaintiff.

Consequently, I do not find any force in the present revision petition, the same is accordingly, dismissed. However, the observations made above will not come in way for adjudication of the dispute.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.